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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/765,112	01/18/2001	Karl Lang	MTI1877-141	8261
8698 7590 04/30/2007 STANDLEY LAW GROUP LLP 495 METRO PLACE SOUTH SUITE 210 DUBLIN, OH 43017			EXAMINER WRIGHT, PATRICIA KATHRYN	
			ART UNIT 1743	PAPER NUMBER
			MAIL DATE 04/30/2007	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

09/765,112

Applicant(s)

LANG, KARL

Examiner

P. Kathryn Wright

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 22 December 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-29 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-29 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. This Office Action is in response to Applicant's Amendment, filed on December 22, 2006. Claims 1-29 are currently pending.
2. Any rejection not repeated herein has been withdrawn.

Claim Rejections - 35 USC § 103

3. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
4. Claims 1- 29 are again rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent no. 3,552,212 to Ohlin in view of US Patent 5,650,122 to Harris.
(hereinafter Harris).

Ohlin discloses a device for cleaning the exterior of instruments, such as transfer devices. The device comprises a ring (22) for holding the transfer device in a downwardly-directed manner. The ring is connected to an arm, which in turn is connected to a vertical post (23) on a housing (11). The ring surrounds the transfer instrument entirely. The vertical post is mounted for axial reciprocation and rotation. A washing device (24) is provided to wash the transfer instruments. The washing device is located vertically below the transfer instruments. The washing device contains a passageway (34), through which wash fluid flows into a recess (31) where the transfer instruments are contacted with the wash fluid. The washing device is separate from the instrument holder.

With respect to the wash device (24) being movable relative to the instruments being cleaned, Ohlin teaches that the collar of the wash device need not be stationary while the body to be cleaned is displaceable, but the collar may move while the instrument being cleaned is stationary (col. 3, lines 51-53). Thus, the wash device may be movable in relation to the instrument being cleaned. Presumably, a drive mechanism allows the instrument and/or wash device to be movable. The housing (11) serves as a constraint to limit the movement of the vertical post. See figures 1-3.

Ohlin differs from the instantly claimed invention in that there is no disclosure of a jet orifice that sprays wash fluid at the instruments that are to be cleaned.

Harris teaches an analysis instrument having a wash manifold (486) for washing aspiration tubes. The wash manifold is charged with a high pressure stream (jet stream) of wash solution by a pump. The wash manifold has multiple wash tubes (484), each of the wash tubes having a fluid outlet/orifice (488) to direct wash solution at the aspiration tubes. The tubes Harris further teaches that the fluid outlets are angled toward the aspiration tube at an angle of about 15°, as recited in claims 8, 9, 15, 16 and 17. Harris teaches that the diameter of the outlet is 0.027 inch (0.68 mm), as recited in claims 12-14. Further, Harris teaches that in spraying the wash solution, an agitated scrubbing action is provided and the time required to conduct the wash cycle is reduced. See col. 15, lines 26-45.

Thus, it would have been obvious to one of ordinary skill in the art to include in the wash ring of Ohlin the use jet orifices directed at an angle, as taught by Harris, to enhance the washing process (because of the scrubbing action provided by spraying)

and thus reduce the time needed to completely wash the instruments. Furthermore, it would have been obvious to one of ordinary skill in the art to use multiple jets to assure that the entire instrument is cleaned. With respect to the claim recitation that the instrument holder be designed to hold more than one instrument, one of ordinary skill in the art would recognize that more than one instrument could fit into the holder of Ohlin, in other words, two or more smaller instruments could fit into the ring and simultaneously washed.

Response to Arguments

5. Applicant's arguments filed December 22, 2006 have been fully considered but they are not persuasive.

In response to the previous rejection of claim 1-29 over Ohlin in view of Harris, Applicant alleges that the combination of Ohlin and Harris, at least in the manner suggested by the Examiner, is not within the scope of one of ordinary skill in this art as required in the *Graham v. John Deere* test for obviousness, *supra*. Applicant asserts that even though the device is part of a sophisticated scientific analyzer the instrument-washing portion, as claimed, is a basic mechanical device and the level of the art is not high, probably a bachelor's level mechanical engineer.

Respectfully, the Office does not agree with Applicant's definition of one of ordinary skill in the art (i.e., a bachelor level engineer.) The Examiner contends that the hypothetical person having ordinary skill in the art to which the claimed subject matter pertains would, of necessity have the capability of understanding the scientific and

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engineering principles applicable to the pertinent art. The courts have found that the hypothetical person is not definable by way of credentials, and that the evidence in the application must support the conclusion that such a person would require a bachelor level or equivalent knowledge in science or engineering. See MPEP 2141.03 and *Ex parte Hiyamizu*, 10 USPQ2d 393, 1394 (Bd. Pat. App. & Inter. 1988).

Furthermore, the Examiner need not specify a particular level of skill where the *prior art itself reflects an appropriate level*. If the only facts of record pertaining to the level of skill in the art are found within the prior art of record, the court has held that an invention may be held to have been obvious without a specific finding of a particular level of skill where the prior art itself reflects an appropriate level. *Chore-Time Equipment, Inc. v. Cumberland Corp.*, 713 F.2d 774, 218 USPQ 673 (Fed. Cir. 1983). See also *Okajima v. Bourdeau*, 261 F.3d 1350, 1355, 59 USPQ2d 1795, 1797 (Fed. Cir. 2001). In this case, the combination of Ohlin and Harris reflect the appropriate level of skill in the art as required in the *Graham v. John Deere* test for obviousness.

Secondly, Applicant argues that claim 1, as currently amended, requires a washing device for at least two instruments which pass through the wash ring. Applicant asserts that the annular space must be just right. Applicant contends that annular space 27 of Ohlin must be controlled between a relatively tight range, since an area too large results in inadequate contaminant removal and an area too small results in wiping contaminants off onto the collar.

Respectfully, the Office does not agree with Applicant's characterization of the Ohlin reference. Claim 1, line 11, recites the washing device comprises a wash ring

surrounding the instruments. The claim does not positively recite the dimensions of the wash ring. The Office contends that Ohlin does not teach away from wash ring surrounding at least two instruments (i.e., probes) because the Ohlin disclosure does not criticize, discredit, or otherwise discourage the wash ring from surrounding at least two probes. See *In re Fulton*, 391 F.3d 1195, 1201, 73 USPQ2d 1141, 1146 (Fed. Cir. 2004) and MPEP 2123. Furthermore, contrary to Applicant's assertion, Ohlin does not set forth a particular range for the annular space. Ohlin states that the shape of the bore 26 in the wash ring and the relative dimensions bore 26 and the probe portion 19 to be cleaned are not critical, see col. 3 lines 33+. (Emphasis added.) Thus, it is possible for the Ohlin wash ring to simultaneously surround a plurality of smaller probes, like the 18-gauge needles taught in Harris, and spray wash fluid at the instruments, as recited in the instant claims.

Moreover, as asserted by Applicant the "at least two instruments" are not elements of the invention. See response filed December 22, 2006, page 6, 2nd full paragraph. Thus, the only distinction between Applicant's claims and the prior art is recited functional language. The recitation of the wash ring surrounding the instruments is merely an intended use, which the prior art would inherently be capable of doing. Thus, it is incumbent upon Applicant to show that the application disclosed by the prior art is not actually capable of performing such functions. See *In re Ludtke*, 169 USQ 563 (CCPA 1971).

For the reasons delineated above, Applicant has failed to demonstrate that the washing device of Ohlin not capable of surrounding at least two probes or that it would

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be rendered inoperable for its intended purpose (i.e., washing). Thus, the rejection of the instant claims is maintained.

Conclusion

6. No claims allowed.

7. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to P. Kathryn Wright whose telephone number is 571-272-2374. The examiner can normally be reached on Thursday, alternate Fridays off.


If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jill A. Warden can be reached on 571-272-1267. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

April 23, 2007

pkw


Jill Warden
Supervisory Patent Examiner
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